



**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Rosa A. Fuentes, M.D.;  
Decision and Order**

On March 1, 2021, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Rosa A. Fuentes, M.D. (hereinafter, Registrant) of San Antonio, Texas. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. FF5063172. It alleged that Registrant is without "authority to handle controlled substances in Texas, the state in which [Registrant is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that the Texas Medical Board issued an order of Temporary Suspension with Notice of Hearing on December 18, 2020. *Id.* This Order, according to the OSC, immediately suspended Registrant's Texas state medical license following the Texas Medical Board's finding that Registrant "prescribed controlled substances in violation of the restrictions that the Board had imposed on [Registrant's] prescribing authority." *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

**Adequacy of Service**

In a Declaration dated April 20, 2021, a Diversion Investigator (hereinafter, DI) assigned to the San Antonio District Office, Houston Field Division, stated that on March 5, 2021, she,

another DI, and a DEA Task Force Officer traveled to Registrant's last known residential address on her 2018-issued driver's license. Request for Final Agency Action, dated April 20, 2021 (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 3 (DI's Declaration), at 2. The DI stated that they met and spoke with Registrant's mother who told them that Registrant was not there. *Id.* While at the same address, the DI then called Registrant at the contact number indicated on her DEA registration and spoke with Registrant, and asked if the DI could leave the OSC with her mother. *Id.* Registrant confirmed that the DI could leave the OSC with her mother and said that she would come to the address later to retrieve it. *Id.* The DI stated that she then personally handed Registrant's mother a copy of the OSC and asked Registrant's mother to sign DEA Form 12, "Receipt for Cash or Other Items" (hereinafter, DEA 12) to indicate that she had received the OSC. *Id.* On March 10, 2021, the DI, along with another DI, visited Registrant's place of business. *Id.* The DI verified Registrant's identity at her place of business by observing Registrant's State of Texas driver's license. *Id.* at 2-3. The DI stated that she then personally handed Registrant an additional copy of the OSC and explained that the 30-day timeline to respond to the OSC began on March 5, 2021, the date when Registrant's mother had been served with the OSC. *Id.* at 3.

The Government forwarded its RFAA, along with the evidentiary record, to this office on April 20, 2021. In its RFAA, the Government represents that "[Registrant] has not submitted a timely request for a hearing in this matter."<sup>1</sup> RFAA, at 1. The Government requests that the Administrator revoke Registrant's DEA registration on the ground that Registrant is "presently not authorized to handle controlled substances in the State of Texas." *Id.* at 2 and 6.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on

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<sup>1</sup> The Government also represents that as of the date of the RFAA, "neither [Registrant] nor any attorney representing her has requested a hearing" and "[neither Registrant] nor any attorney for her [has] submitted a written statement." RFAA, at 2.

March 5, 2021. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 C.F.R. § 1301.43(e).

## **FINDINGS OF FACT**

### **Registrant's DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. FF5063172 at the registered address of Texas Low T & Weight Loss Clinic PLLC, 7551 Callaghan Road, Suite 120, San Antonio, Texas 78229. RFAAX 1 (DEA Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules IV and V as a practitioner. *Id.*

### **The Status of Registrant's State License**

On December 18, 2020, the Texas Medical Board (hereinafter, Board) issued an Order of Temporary Suspension with Notice of Hearing (hereinafter, Suspension Order). RFAAX 3, App. A (Suspension Order), at 1. According to the Suspension Order, Registrant has a "lengthy disciplinary history with the Board." *Id.* at 2.

On or around August 31, 2012, the Board publicly reprimanded Registrant through an Agreed Order (hereinafter, 2012 Order) and imposed certain terms and conditions on her medical license based on her "failure to adequately supervise mid-level practitioners, prescribing controlled substances without valid controlled substance registration certificates, and providing false information to the Board." *Id.* The 2012 Order also required that Registrant take and pass the JP Exam, complete eight hours of continuing medical education in risk management,

complete sixteen hours of continuing medical education in supervision of mid-level providers, and pay an administrative penalty of \$5,000. *Id.* On or about June 12, 2015, the 2012 Order was terminated by the Board based on Registrant's representation that she "no longer employed mid-level practitioners and had no plans to employ mid-level practitioners in the future." *Id.*

On March 2, 2018, the Board entered a Final Order (2018 Final Order) that "prohibited [Registrant] from possessing, administering, dispensing, or prescribing Schedules II and III controlled substances with the sole exception of testosterone therapy and that only allowed her to prescribe Schedules IV and V controlled substances to patients for periods of less than 30 days with refills prohibited." *Id.* at 2-3. Registrant was also prohibited from issuing any refills for controlled substances for a minimum of five years, as well as prohibited from "delegating to or supervising the activities of mid-level practitioners." *Id.* at 3. The 2018 Final Order followed a contested case proceeding at the State Office of Administrative Hearings. *Id.* at 2. The action was based on Registrant "being placed on deferred adjudication following a guilty plea for violating provisions of the Medical Practice Act." *Id.* at 3.

On December 6, 2019, the Board entered an Agreed Order on Formal Filing (2019 Order) after determining that Registrant was in violation of the prescribing restrictions in the 2018 Final Order. *Id.* The 2019 Order first required that Registrant "request modification of her DEA Controlled Substances Registration Certificates to eliminate Schedules II and III within seven days of entry of the [2019 Order]." *Id.* The 2019 Order also required that Registrant "could only prescribe controlled substances in accordance with the conditions set forth in the [2018 Final Order]" and that Registrant was "prohibited from re-registering with the DEA for Schedules II and III controlled substances without written authorization from the Board after a personal appearance." *Id.* Additionally, the 2019 Order prohibited Registrant from "possessing, administering, or prescribing controlled substances in Texas other than prescriptions written to her by a licensed provider for legitimate personal use" and required, effective February 1, 2020, that Registrant "limit her practice to a pre-approved group or institutional setting." *Id.* Further,

the 2019 Order required that Registrant undergo eight consecutive cycles of chart monitoring and prohibited Registrant from supervising or delegating prescriptive authority to mid-level providers. *Id.* Finally, the 2019 Order required Registrant to “provide a copy of the [2019 Order] to all healthcare entities where privileged or practicing and to provide proof of such delivery within 30 days.” *Id.*

According to the Suspension Order, Registrant violated multiple conditions set forth in the 2018 and 2019 orders. First, Registrant “failed to surrender her controlled substances registrations with the DEA to eliminate Schedules II and III by the December 13, 2019 deadline in the 2019 Order. In fact, [Registrant] did not surrender these registrations until on or around October 20, 2020.” *Id.* Additionally, Registrant “prescribed controlled substances in violation of the 2018 and 2019 [orders], as evidenced by controlled substance refills that were written between March 16, 2019 and March 16, 2020 in violation of . . . the 2018 Order.” *Id.*

Furthermore, although Registrant was prohibited, effective February 1, 2020, from practicing medicine in any setting other than a pre-approved group or institutional setting, Registrant failed to request approval for a group/institutional setting by the February 1, 2020 deadline and “instead, [Registrant] has continued to practice medicine at Texas Low T clinic in violation of . . . the 2019 Order to date.” *Id.* The Suspension Order went on to list how Registrant had also “failed to initiate chart monitoring in violation of . . . the 2019 Order” as well as “failed to cooperate with Board Staff by failing to timely respond to communications from her Compliance Officer, by failing to return compliance-related documentation including but not limited to evidence that she has surrendered her Schedule II and III controlled substances registrations, by failing to file quarterly compliance reports, and by misrepresenting the nature and scope of her current practice setting.” *Id.*

The Suspension Order concluded that Registrant “has engaged in unprofessional conduct by violating the terms and conditions set forth in the 2018 [Final] Order and the 2019 Order.” *Id.* at 5. The Suspension Order stated that despite the “significant restrictions and requirements

imposed on [Registrant's] medical practice as the result of two separate Board orders, [Registrant's] practice has continued almost unchanged since March 2018" and that "[Registrant's] willingness to defy the Board through repeated, flagrant, and ongoing violations of previous Board Orders intended to restrict her practice and protect the public – including one order that [Registrant] explicitly agreed to – demonstrates that her continuation in the practice of medicine poses a continuing threat to public health and welfare." *Id.* Based on its findings and conclusions, the Board ordered that Registrant's medical license be temporarily suspended "effective on the date rendered" until superseded by a subsequent Board order. *Id.* at 6.

According to Texas's online records, of which I take official notice, Registrant's license is still suspended.<sup>2</sup> Texas Medical Board, <https://www.tmb.state.tx.us/page/look-up-a-license> (last visited date of signature of this Order). Texas's online records show that Registrant's medical license remains suspended and that Registrant is not authorized in Texas to practice medicine. *Id.*

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine in Texas, the State in which Registrant is registered with the DEA.

## **DISCUSSION**

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the DEA

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<sup>2</sup> Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Under the Texas Controlled Substances Act, a practitioner in Texas "may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice." Tex. Health and Safety Code Ann. § 481.071 (West 2019). The Texas Controlled Substances Act defines "practitioner," in relevant part, as "a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, analyze,

conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.” *Id.* at § 481.002 (39)(A). Further, under the Texas Medical Practice Act, a person must hold a license to practice medicine in Texas, Tex. Occupations Code Ann. § 155.001 (West 2019) (“A person may not practice medicine in this state unless the person holds a license issued under [the Medical Practice Act].”); *see also id.* at § 151.002 (“‘Physician’ means a person licensed to practice medicine in this state.”), and “[a] person commits an offense if the person practices medicine in [Texas] in violation of” the Act, *id.* at § 165.152(a).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Texas. I, therefore, find that Registrant is currently without authority to dispense controlled substances in Texas, the state in which she is registered with DEA. Accordingly, I will order that Registrant’s DEA registration be revoked.

### **ORDER**

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. FF5063172 issued to Rosa A. Fuentes, M.D.



Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Rosa A. Fuentes, M.D. to renew or modify this registration, as well as any other pending application of Rosa A. Fuentes, M.D., for additional registration in Texas. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

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D. Christopher Evans,  
Acting Administrator.

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